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Presidential Primary Elections—Legislation of 1910-1912. The most notable characteristic of primary election legislation during the past two years is the rapid extension of the application of the direct primary to national party machinery and nominations, through state, not national, action. For years the steady advance of the direct primary movement confined itself entirely to state party organization and nominations for offices elective within a single state. The selection of state party representatives in national party councils was passed over in silence, or expressly exempted from the direct primary, or legally to be exercised indirectly through delegate conventions. The only influence exerted by the direct primary on national party operations was indirect and roundabout. Hence the application of the direct primary to the choice of national committeemen, delegates to national conventions, and the instruction of delegates through a presidential preference vote is a distinct innovation. It marks the loosening of the bonds of excess-control by national over state party organization, and constitutes a long stride toward making national party machinery and nominations subject to legal regulation and more truly representatives of the will of the rank and file of the party.

The introduction of the direct primary into the field of national party activities began as early as 1906 with the Pennsylvania provision for the choice of delegates to national conventions at primary elections.¹ Wisconsin (1907), Oklahoma² (1908), and South Dakota (1909) adopted the innovation, and extended its application. In 1910, Oregon enacted the first law providing for a distinct presidential preference primary election.³ These pioneers having blazed the way, there followed during the next two years the passage of similar acts by nine or ten states, five,⁴ in 1911 and four or five⁵ in 1912, making at least one-fourth of the states having such legislation.

These twelve laws present many marked similarities and some decided differences in scope and method. Two⁶ provide for the direct

¹Applies only to congressional district delegates, those at large being chosen by state conventions, the delegates to which are elected directly by the respective party voters.

²Provision repealed in 1909.

³Proposed by initiative petition and approved at the November election.

⁴N. J., N. D., Nebr., Wis., Cal. Wisconsin added the presidential preference vote to her law of 1907 for the direct choice of delegates.

⁵Md., Mass., Ill., Mich., and probably Maine. For want of a few votes the Michigan act failed to become effective in time for use in 1912.

⁶Pa., S. D.

choice of delegates to national conventions without a distinct presidential preference vote; three⁷ for a presidential preference vote without a direct choice of delegates; while seven⁸ provide for both a presidential preference vote and the direct choice of delegates.⁹ Three states¹⁰ require the selection of national committeemen by direct vote of the party electors; one, New Jersey, by the state central committee; while the others leave the selection to party usage. Finally, two states, Oregon and North Dakota, emphasize the public character of the functions of delegates to a national convention by providing that every delegate of a legally defined political party "shall receive from the State Treasury the amount of his traveling expenses necessarily spent in actual attendance upon said convention, . . . but in no case to exceed two hundred dollars for each delegate."

The provisions respecting delegates and committeemen are mandatory upon all legally recognized political parties. The presidential preference primary is merely permissive in five states,¹¹ while in five others¹² it is essentially mandatory, at least in spirit. "The qualified electors of the political parties subject to this law shall have opportunity to vote for their preference, on ballots provided for that purpose, . . . among those aspiring to be candidates of their representative parties for president," reads a typical provision. One-half¹³ of these laws provide for a *separate* presidential primary election every four years, the other half,¹⁴ for a *combined* presidential and general state primary election. The dates for holding these various presidential primaries range over a period of eleven weeks from March 19 to June 4. Only two, those of Oregon and Nebraska, fall on the same day. In every one of these states all political parties hold their presidential primaries on the same day and at the same polling places. They are conducted in the same general manner as regular elections, and entirely

⁷Md., Ill., Mich.

⁸Ore., N. D., Wis., N. J., Nebr., Cal., Mass.

⁹In all but two states, the direct choice of delegates includes alternates, both district and at large. California provides for the choice of alternates by the regular delegates and Wisconsin by the state central committee. In five states, Ore., Nebr., N. D., Wis., and Mass., the presidential preference primary applies to the vice-presidency also.

¹⁰S. D., N. D., Nebr.

¹¹Wis., N. J., Md., Mass., Ill.

¹²Ore., N. D., Nebr., Cal., Mich.

¹³Wis., N. D., N. J., Cal. Mass., Mich.

¹⁴S. D., Ill., Pa., Ore., Nebr., Md., the last four by advancing the date of their general primary in presidential years.

at public expense. The party test and other qualifications for voting at presidential primaries are in every case exactly the same as those required at the general state primary election. Without exception a direct plurality vote suffices to instruct, nominate, or elect as the case may be.

Candidates for national committeemen may have their names placed on the primary ballot only by petitions signed by their respective party voters.¹⁵ In South Dakota, the names of candidates for election as delegates to national conventions are printed on the ballot upon written request and a declaration of candidacy. But in the other states providing for direct choice, a place on the ballot is secured by such candidates only by petitions containing the signatures of a specified number¹⁶ or percentage of party electors. With only two exceptions, the names of presidential candidates are to be printed on the ballot "solely on the petition of their political supporters"¹⁷ in the state. "No signature statement, or consent shall be required to be filed by any such candidate." Two states, California and New Jersey, expressly provide that any person thus put forward as a candidate may withdraw his name by a written declination filed with the secretary of state. In marked contrast with the above policy, Illinois provides for a personal petition by presidential candidates to be indorsed by at least three thousand party voters; while Maryland requires both the filing of a certificate of candidacy and the payment of a fee in each of her twenty-seven counties and legislative districts.

The names of individual candidates, whether for president, national committeemen, or delegates to national conventions, are to be arranged on the ballot as follows: in two states, in the order of the filing of petitions; in four, in alphabetical order; in four more, according to a system of rotation. In six states, the names of candidates for the positions of delegates to national conventions appear on the ballot only individually and with absolutely no indication of their presidential preference with the one exception of Pennsylvania. There, would-be delegates may have placed on the ballot opposite their individual names, that of the candidate they prefer and wish to support for president. In New Jersey, South Dakota and California can-

¹⁵Nebr. requires 500 signatures in each of her 6 congressional districts, if not more than 5% of total party vote; S. D. and N. D., only 1% of state party vote.

¹⁶Varies greatly in different states: only 100 in N. J. and 250 in Mass. for all delegates, while 500 in Nebr. for district delegates and 3,000 for those at large.

¹⁷Number required in Nebr., 25; Mich., 100; Mass., N. J., Ore., Wis., 1,000; Cal. and N. D., 1% of state party vote.

didates for election as delegates may appear on the ballot not only individually but in groups to be voted for as a unit. In New Jersey, candidates may have printed opposite their names individually or in a group, and under the caption "Choice for President," the name of the candidate they favor. In South Dakota, a group may go on the ballot under the common motto or pledge of not more than five words. In California, a full set of candidates for election as delegates may go on the ballot as a group, on two conditions: first, that not less than one nor more than four of the candidates shall come from each congressional district; second, that such group has "the endorsement of that candidate for presidential nominee for whom the members of said group have filed a preference, or the endorsement of such a state political organization created in support of the candidacy of said presidential nominee as shall not be repudiated by him as lacking authority to make such endorsement."

Both California and New Jersey provide for the mailing of sample presidential primary ballots to the voters for their instruction. But the former state further provides that the sample ballot of each party shall be accompanied by a sheet of "biographical sketches of presidential candidates." These sketches are not to exceed three hundred words in length. "The biographical sketch of each candidate for presidential nomination shall be furnished by such candidate or by such state political organization created in support of his candidacy as shall not be repudiated by him as lacking authority" to do so. Those submitting such sketches must pay two hundred dollars a sketch to defray the cost of publication.

These presidential primary states form two groups with respect to the territorial or political unit of election and instruction of delegates to national conventions. In five states¹⁸ two delegates are chosen by each congressional district and four at large, thus treating the district as the primary and the state as only a secondary election unit. All of this group of states except Pennsylvania provide for a presidential preference vote by all the party voters of the state; but make no attempt by law to define its operation, nor to add particularly to its moral and political force as an instruction to the delegates.

Illinois expressly provides that the preferential "vote of the state at large shall be taken and considered as advisory to the delegates and alternates at large to the national conventions of the respective political parties; and the vote of the respective congressional districts

¹⁸Pa., Wis., Nebr., N. J., Mass.

shall be taken and considered as advisory to the delegates and alternates of said congressional district."

In a second group of five states,¹⁹ the delegates to national conventions are all elected by the state at large.²⁰ The state is treated as the sole and supreme unit or agency both for electing and instructing delegates. Oregon and North Dakota seek to make the preferential vote binding by requiring every delegate to take an oath of office that he will "to the best of his judgment and ability, faithfully carry out the wishes of his political party as expressed by its voters at the time of his election." California closely connects the choice of delegates with the presidential preference vote by providing for a full group of indorsed and pledged candidates, placed on the ballot under the name of the candidate they favor for president, so that the candidate carrying the state on the preferential vote will almost inevitably secure all the delegates. This state also has a permissive provision for a statement or pledge by a prospective delegate that if elected he will to the best of his judgment and ability support that candidate for president who received a plurality of the "votes cast throughout the entire state" by the voters of his party.

Michigan provides that the candidate receiving a plurality of the presidential preference "votes in the state . . . shall be declared to be the candidate and the choice of such political party for this state." The Maryland law goes the farthest in seeking to bind the delegates by the presidential preference vote. It provides that the person receiving a majority of a party preferential vote for president "has been chosen by the voters of the party . . . as their choice for candidate for President in the national convention for such political party, and all the delegates of such party . . . shall be instructed and bound to vote as a unit in the national convention for such candidate . . . as long as in their conscientious judgment there is any possibility of his being nominated."

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¹⁹S. D., Ore., N. D., Cal., Md.

²⁰In Md. all the delegates are chosen by a state convention made up of delegates chosen directly on the date of the presidential preference vote. The result of the presidential preference vote is not ascertained as is usual in primary laws, by adding up the total vote for a candidate throughout the State. The vote of each county and district is considered by itself, and the carrying of any county or district by a candidate merely serves legally to instruct and require its delegates to the state convention to vote for him. Not the party voters but the state convention voting by counties and districts under the unit rule as instructed by the primary vote formally and legally makes the presidential preference nomination.